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9 Attorneys for Defendant and Cross-Plaintiff
City of San Jose and Defendant Debra Figone,
10 in Her Official Capacity

11 **IN THE SUPERIOR COURT FOR THE**
12 **COUNTY OF SANTA CLARA**

13 SAN JOSE POLICE OFFICERS
ASSOCIATION,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSE, BOARD OF
17 ADMINISTRATION FOR POLICE AND
FIRE RETIREMENT PLAN OF CITY OF
18 SAN JOSE, and DOES 1-10 inclusive,

19 Defendants.

20 AND RELATED CROSS-COMPLAINT
21 AND CONSOLIDATED ACTIONS

Case No. 1-12-CV-225926

[Consolidated with Case Nos. 112CV225928,
112CV226570, 112CV226574, 112CV227864,
and 1112CV23360]

**DECLARATION OF MICHAEL C.
HUGHES IN SUPPORT OF DEFENDANT
CITY OF SAN JOSE'S SUPPLEMENTAL
MOTION *IN LIMINE* TO EXCLUDE
AFSCME WITNESSES CAROL GARCIA
AND PEGGY HORNING FROM
TESTIFYING AT TRIAL**

Date: July 12, 2013
Time: 9:00 a.m.
Dept.: 2

Complaint Filed: June 6, 2012
Trial Date: July 22, 2013

1 I, Michael C. Hughes, declare:

2 1. I am one of the attorneys for the City of San Jose in the above-captioned matter. I
3 make this declaration in connection with and to support the City's supplemental motion *in limine*
4 to exclude the testimony of witnesses Carol Garcia and Peggy Horning from trial. The following
5 facts are within my personal knowledge and, if called upon as a witness, I could and would testify
6 competently with respect thereto.

7 2. On April 23, 2013, the Court granted a "Stipulation and Order Regarding Pre-Trial
8 and Trial Schedule." In this Order, the Court provides that, "[a]ny witness designated either as a
9 trial witness by brief statement or as a witness by declaration shall be made available for
10 deposition as requested." I have attached a true and correct copy of this Order as Exhibit A hereto.

11 3. On June 20, 2013, the City received a copy of AFSCME's "Final Trial Witness and
12 Exhibit List." This list names Carol Garcia and Peggy Horning as trial witnesses. Their names
13 were not included in AFSCME's initial witness list, and this is the first time the City learned they
14 would be AFSCME trial witnesses. I have attached a true and correct copy of AFSCME's "Final
15 Trial Witness and Exhibit List" as Exhibit B hereto.

16 4. On June 24, 2013, the City noticed the deposition of Ms. Garcia for July 1, 2013 at
17 11:00 a.m. and of Ms. Horning for July 8, 2013 at 1:00 p.m., both at the Oakland office of Meyers
18 Nave. I have attached a true and correct copy of the City's "Notice of Oral Depositions and
19 Request for Production of Documents" as Exhibit C hereto.

20 5. On June 25, 2013, AFSCME counsel Vishtap Soroushian wrote to City counsel
21 Arthur Hartinger to state that AFSCME counsel was unavailable during the notice depositions and
22 to request that the depositions be rescheduled. I have attached a true and correct copy of Mr.
23 Soroushian's letter as Exhibit D hereto.

24 6. On June 25, 2013, I emailed Mr. Soroushian and requested that he provide alternate
25 dates on or before July 9, 2013. I have attached a true and correct copy of my June 25th email as
26 Exhibit E hereto.

27 ///

28

1 7. On June 27, 2013, I emailed Mr. Soroushian a comprehensive list of possible
2 deposition dates and times. In that same email, I informed Mr. Soroushian that the City would
3 consider AFSCME's request to depose AFSCME witnesses in San Jose. I have attached a true
4 and correct copy of my June 27th email as Exhibit F hereto.

5 8. On June 27, 2013, Mr. Soroushian emailed me to state that, "Carol Garcia is out of
6 town and unavailable starting tomorrow (June 28) through July 19." *July 19th is the last weekday*
7 *before the Monday, July 22nd trial.* I have attached a true and correct copy of Mr. Soroushian's
8 June 27th email as Exhibit G hereto.

9 9. As of Friday, June 28, 2013, AFSCME had not provided any deposition times for
10 Mr. Horning. As a result, the City noticed her deposition for Friday, July 11, 2013 at 3:30 p.m. in
11 San Jose. The City emailed AFSCME a copy of the deposition notice on the afternoon of Friday,
12 June 28, 2013. Based on AFSCME's representation that Ms. Garcia was unavailable, the City did
13 not notice her for deposition.

14 10. On Monday, July 1, 2013, I informed AFSCME by letter that the City would file a
15 motion in limine to exclude Ms. Garcia from testifying at trial. In my letter, I reaffirmed the
16 City's willingness to discuss alternate deposition dates for the week of July 8th to July 12th. I
17 arranged for my letter and the City's Second Amended Deposition notice to be personally served
18 on Monday morning, July 1, 2013. I have attached a true and correct copy of my July 1st letter
19 and the City's Second Amended Deposition Notice as Exhibits H and I hereto.

20 11. On July 2, 2013, Mr. Soroushian emailed me to state that: "Ms. Peggy Horning is
21 available for a deposition in San Jose on Monday, July 15, or Tuesday, July 16, preferably in the
22 afternoon. The previous week does not work for her." The trial begins one week from Monday,
23 July 15, 2013. I have attached a true and correct copy of Mr. Soroushian's July 2, 2013 email as
24 Exhibit J hereto.

25 ///

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27 ///

12. On July 2, 2013 I emailed Mr. Soroushian to state that the City would file a motion to exclude Carol Garcia and Peggy Hornign from testifying at trial, but that the City remained willing to discuss alternate dates during the week of July 8 to 12, 2013.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 3 day of July 2013 at Oakland, California,

Michael C. Hughes

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On July 3, 2013, I served true copies of the following documents described as
**DECLARATION OF MICHAEL C. HUGHES ISO CITY OF SAN JOSE'S
SUPPLEMENTAL MOTION *IN LIMINE* TO EXCLUDE AFSCME WITNESSES CAROL
GARCIA AND PEGGY HORNING FROM TESTIFYING AT TRIAL** on the interested
parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address kthomas@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 3, 2013, at Oakland, California.


Jilala Foley

SERVICE LIST

<p>John McBride Christopher E. Platten Mark S. Renner WYLIE, MCBRIDE, PLATTEN & RENNER 2125 Canoas Garden Ave, Suite 120 San Jose, CA 95125 Telephone: 408-979-2920 Fax: 408-989-0932 E-Mail: jmcbride@wmpirlaw.com cplatten@wmpirlaw.com mrenner@wmpirlaw.com</p>	<p>Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN, MARY MCCARTHY, THANH HO, RANDY SEKANY AND KEN HEREDIA (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112CV226574)</p> <p>AND</p> <p>Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112CV226570)</p>
<p>Gregg McLean Adam Jonathan Yank Gonzalo Martinez Jennifer Stoughton Amber L. West CARROLL, BURDICK & MCDONOUGH, LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104 Telephone: 415-989-5900 Fax: 415-989-0932 E-Mail: gadam@cbmlaw.com jyank@cbmlaw.com gmartinez@cbmlaw.com jstoughton@cbmlaw.com awest@cbmlaw.com</p>	<p>Attorneys for Plaintiff, SAN JOSE POLICE OFFICERS' ASSOC. (Santa Clara Superior Court Case No. 112CV225926)</p>
<p>Teague P. Paterson Vishtap M. Soroushian BEESON, TAYER & BODINE, APC Ross House, 2nd Floor 483 Ninth Street Oakland, CA 94607-4050 Telephone: 510-625-9700 Fax: 510-625-8275 E-Mail: tpaterson@beesontayer.com; vsoroushian@beesontayer.com;</p>	<p>Plaintiff, AFSCME LOCAL 101 (Santa Clara Superior Court Case No. 112CV227864)</p>

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15

Attorneys for Defendant, CITY OF SAN JOSE,
BOARD OF ADMINISTRATION FOR POLICE AND
FIRE DEPARTMENT RETIREMENT PLAN OF
CITY OF SAN JOSE
(Santa Clara Superior Court Case No. 112CV225926)

AND

Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE 1961 SAN JOSE
POLICE AND FIRE DEPARTMENT RETIREMENT
PLAN
(Santa Clara Superior Court Case No. 112CV225928)

AND

Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE 1975 FEDERATED
CITY EMPLOYEES' RETIREMENT PLAN
(Santa Clara Superior Court Case Nos. 112CV226570
and 112CV226574)

AND

Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE FEDERATED CITY
EMPLOYEES RETIREMENT PLAN
(Santa Clara Superior Court Case No. 112CV227864)

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17 Richard A. Levine, Esq.
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Attorneys for Plaintiffs/Petitioners
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HOWARD E. FLEMING, DONALD S. MACRAE,
FRANCES J. OLSON, GARY J. RICHERT AND
ROSALINDA NAVARRO
(Santa Clara Superior Court Case No. 1-12-cv-233660)

2105206.1

EXHIBITS TO HUGHES DECLARATION

EXHIBIT A

1 Gregg McLean Adam, No. 203436
Jonathan Yank, No. 215495
2 Gonzalo C. Martinez, No. 231724
Amber L. West, No. 245002
3 **CARROLL BURDICK & McDONOUGH LLP**
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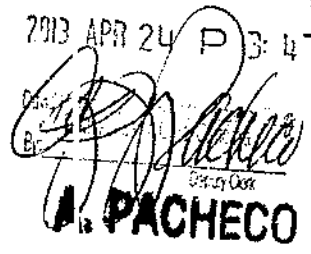
6
7 Attorneys for Plaintiff and Cross-Defendant
San Jose Police Officers' Association
("SJPOA")

8 John A. McBride, No. 036458
9 Christopher E. Platten, No. 111971
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12 Email: jmcbride@wmpirlaw.com

13 Attorneys for Plaintiffs and Cross-Defendants
Sapien, Harris, and Mukhar, et al.

14 Teague P. Paterson, No. 226659
15 Vishtasp M. Soroushian, No. 278895
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18 Email: tpaterson@beesonlayer.com

19 Attorneys for Plaintiff and Cross-Defendant
Municipal Employees' Federation,
20 AFSCME, Local 101

2013 APR 24 P 3: 47

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Jacob A. Kalinski, No. 233709
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Linda M. Ross No. 133874
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Email: lross@meyersnave.com

Attorneys for Defendant City of San Jose

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF SANTA CLARA

23
24 **SAN JOSE POLICE OFFICERS'**
ASSOCIATION,

25 Plaintiff,

26 v.

27 **CITY OF SAN JOSE, BOARD OF**
ADMINISTRATION FOR POLICE
28 **AND FIRE DEPARTMENT**

No. 1-12-CV-225926
(and Consolidated Actions
1-12-CV-225928, 1-12-CV-226570,
1-12-CV-226574, 1-12-CV-227864,
and 1-12-CV-233660)

STIPULATION AND [PROPOSED] ORDER
REGARDING PRE-TRIAL AND TRIAL
SCHEDULE

CBM-SF5833558

1 RETIREMENT PLAN OF CITY OF
2 SAN JOSE, and DOES 1-10,
3 inclusive,

4 Defendants.

5 AND RELATED CROSS-
6 COMPLAINT AND
7 CONSOLIDATED ACTIONS

Complaint Filed: June 16, 2012
Trial: July 22, 2013

8 WHEREAS, the above-captioned matters have been consolidated for pre-trial
9 purposes;

10 WHEREAS, the Parties in all the consolidated cases have agreed that all
11 causes of action and all claims in the separate complaints shall be tried on a consolidated
12 basis;

13 WHEREAS, the parties met with the Court at the Case Management
14 Conference on Friday, April 19, and the Court established certain deadlines which were
15 placed on the record after the parties had the opportunity to meet and confer;

16 WHEREAS, the parties now desire to confirm the pretrial and trial schedule in
17 this Stipulation and Proposed Order; and formed the following agreement;

18 IT IS HEREBY STIPULATED AND AGREED by and among the
19 undersigned parties, by and through their counsel, as follows:

20 **STIPULATION AS TO SCHEDULE FOR CITY'S**
21 **PENDING MOTION FOR SUMMARY ADJUDICATION**

22 1. The page length for the opposition briefs filed in response to the MSA
23 shall be a maximum of 40 pages for Plaintiff San Jose Police Officers' Association and a
24 combined maximum of 40 pages for Plaintiffs Sapient, Harris, and Mukhar, et al.'s cases.¹

25 2. The hearing on the City's Motion for Summary Adjudication ("MSA") is
26 now set to be heard in Department 2 on June 7, 2013, at 9:00 a.m.;

27 ¹ The Court approved Plaintiff AFSCME's ex parte application requesting a page length
28 extension for its opposition brief in response to the MSA brief on February 8, 2013,
approving a 40-page maximum for AFSCME's opposition brief.

1 3. The opposition briefs of Plaintiff SJPOA and plaintiff AFSCME to the
2 City's MSA and the combined MSA opposition brief of Plaintiffs Sapien, Harris, and
3 Mukhar are now due May 3, 2013 and the opposition brief of San Jose Retired Employees
4 Association (SJREA) is due May 8, 2013;

5 4. The City's Consolidated Reply brief shall be a maximum of 40 pages and
6 is now due May 24, 2013 by Noon;

7 **STIPULATION AS TO SCHEDULE FOR CITY'S**
8 **PENDING DEMURRER IN AFSCME MATTER**

9 1. The City shall have until April 23, 2013 to file and serve a reply brief.

10 2. The hearing on the demurrers shall be heard on April 30, 2013, in

11 Department 2, at 8:30 a.m.

12 **STIPULATION AS TO PRE-TRIAL AND TRIAL SCHEDULE,**
13 **AND CERTAIN PROCEDURES**

14 1. **Substance of the Action and Relief Sought.** By June 7, 2013, all parties
15 shall serve by e-mail or hand on all other parties: (1) a list of all Sections of Measure B at
16 issue in their complaints and the legal basis for their contentions to enable all parties to
17 prepare proposed lists of evidence in advance of the pretrial conference; and (2) a
18 complete statement as to the specific declaratory and injunctive relief requested.

19 2. **Initial Information Exchange:** On June 14, 2013, 28 days prior to the
20 July 12 Pretrial Conference, the parties shall prepare and submit:

21 a. An initial list of joint exhibits, stipulated as to authenticity.

22 b. An initial list of stipulated undisputed facts.

23 c. An initial list of exhibits and facts not stipulated to.

24 d. An initial list of witnesses, if any, with declarations containing their
25 testimony for trial or a brief statement describing the substance of the witnesses' trial
26 testimony. This procedure does not preclude a party from noticing the deposition of a
27 prospective witness or calling a witness at trial. Each side (with plaintiffs constituting one
28 side and the City the other side) shall be limited to 15 witnesses per side. The parties shall

1 have the option of accepting the declarations as trial testimony, subject to objections,
2 filing counter-declarations, and/or cross examining the witness at trial. Any witness
3 designated either as a trial witness by brief statement or as a witness by declaration shall
4 be made available for deposition as requested. If a declaration is accepted (regardless of
5 whether there is cross-examination), the witness shall not be counted toward the 15-
6 witness limit. If a declaration is not accepted and the witness testifies, then the testimony
7 shall be counted toward the limit. All parties shall have an opportunity to depose trial
8 witnesses.

9 c. An estimate of trial time for the each of the major issues to be
10 addressed at trial.

11 3. Schedule And Pre-Trial Conference:

12 a. Schedule. The parties will adhere to the following schedule:

13 i. **June 20, 2013.** Final lists of proposed exhibits and trial
14 witnesses, if any (with summaries of trial testimony and declarations), to be exchanged by
15 e-mail or hand delivery.

16 ii. **June 27, 2013.** Motions in limine to be filed and served by e-
17 mail or by hand delivery.

18 iii. **July 8, 2013.** Pretrial briefs and oppositions to motions in
19 limine to be filed and served by e-mail or by hand delivery.

20 iv. **July 12, 2013, 9 a.m.** Mntions in limine and other pretrial
21 matters to be decided at a final pretrial conference.

22 v. **Trial, July 22, 2013.** Plaintiffs as a group and defendant City
23 shall have equal time to present their cases at trial. The trial is set for five days.


24 b. Post-trial briefing. The parties propose that plaintiffs as a group and
25 defendant City of San Jose each submit a proposed statement of decision and brief to the
26 Court by a date set by the Court.

27 c. Trial. The Court shall set specific times when the trial will be in
28 session;

1 d. The Court shall consider any other trial management matter which
2 is likely to promote fair and efficient resolution of the case.

3
4 Dated: April 23, 2013

MEYERS, NAVE, RIBACK, SILVER &
WILSON

7 By 
8 Arthur A. Hartinger
9 Linda Ross
10 Geoffrey Spellberg
11 Attorneys for Defendant and Cross-Complainant
12 City of San Jose

11 Dated: April __, 2013

WYLIE, McBRIDE, PLATTEN & RENNER

14 By _____
15 John McBride
16 Christopher E. Platten
17 Attorneys for Plaintiffs and Cross-Defendants in
18 the *Sapient, Harris, and Mukhar* cases

18 Dated: April __, 2013

BEESON, TAYOR & BODINE, APC

21 By _____
22 Teague P. Paterson
23 Vishtasp M. Soroushian
24 Attorneys for Plaintiffs and Cross-Defendants in
25 *AFSCME*

1 d. The Court shall consider any other trial management matter which
2 is likely to promote fair and efficient resolution of the case.

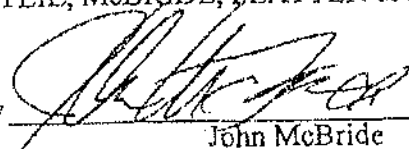
3
4 Dated: April __, 2013

5 MEYERS, NAVE, RIBACK, SILVER &
6 WILSON

7
8 By _____
9 Arthur A. Hartinger
10 Linda Ross
11 Geoffrey Spellberg
12 Attorneys for Defendant and Cross-Complainant
13 City of San Jose

14
15 Dated: April 23 2013

16 WYLIE, McBRIDE, BLATTEN & RENNER

17
18 By  _____
19 John McBride
20 Christopher E. Platten
21 Attorneys for Plaintiffs and Cross-Defendants in
22 the *Sapien*, *Harris*, and *Mukhar* cases

23
24 Dated: April __, 2013

25 BEESON, TAYOR & BODINE, APC

26
27 By _____
28 Teague P. Paterson
Vishtasp M. Soroushian
Attorneys for Plaintiffs and Cross-Defendants in
AFSCME

1 d. The Court shall consider any other trial management matter which
2 is likely to promote fair and efficient resolution of the case.

3
4 Dated: April __, 2013

5 MEYERS, NAVE, RIBACK, SILVER &
6 WILSON

7 By _____
8 Arthur A. Hartinger
9 Linda Ross
10 Geoffrey Spellberg
11 Attorneys for Defendant and Cross-Complainant
12 City of San Jose

13
14 Dated: April __, 2013

15 WYLIE, McBRIDE, PLATTEN & RENNER

16 By _____
17 John McBride
18 Christopher E. Platten
19 Attorneys for Plaintiffs and Cross-Defendants in
20 the *Sapien*, *Harris*, and *Mukhar* cases

21
22 Dated: April 22, 2013

23 BEESON, TAYOR & BODINE, APC

24 By _____
25 Teague P. Paterson
26 Vishtasp M. Soroushian
27 Attorneys for Plaintiffs and Cross-Defendants in
28 *AFSCME*

1 Dated: April 21, 2013

2 REED SMITH, LLP

3 By Harvey L. Leiderman
4 Harvey L. Leiderman
5 Attorneys for Board of Administration For Police
6 and Fire Department Retirement Plan of City of
7 San Jose and Federated City Employees
8 Retirement System, Necessary Party in Interest

9 Dated: April ___, 2013

10 CARROLL, BURDICK & McDONOUGH LLP

11 By _____
12 Gregg McLean Adam
13 Amber L. West
14 Attorneys for Plaintiff and Cross-Defendant
15 San Jose Police Officers' Association

16 Dated: April ___, 2013

17 SILVER, HADDEN, SILVER, WEXLER &
18 LEVINE

19 By _____
20 Stephen H. Silver
21 Jacob Kalinski
22 Attorneys for Plaintiff San Jose Retired
23 Employees' Association
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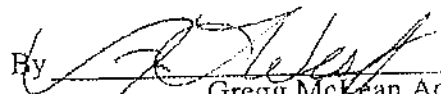
1 Dated: April __, 2013

2 REED SMITH, LLP

3
4 By _____
5 Harvey L. Leiderman
6 Attorneys for Board of Administration For Police
7 and Fire Department Retirement Plan of City of
8 San Jose and Federated City Employees
9 Retirement System, Necessary Party in Interest

10 Dated: April __, 2013

11 CARROLL, BURDICK & McDONOUGH LLP

12 By  _____
13 Gregg McKean Adam
14 Amber L. West
15 Attorneys for Plaintiff and Cross-Defendant
16 San Jose Police Officers' Association

17 Dated: April __, 2013

18 SILVER, HADDEN, SILVER, WEXLER &
19 LEVINE

20 By _____
21 Stephen H. Silver
22 Jacob Kalinski
23 Attorneys for Plaintiff San Jose Retired
24 Employees' Association
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Dated: April __, 2013

REED SMITH, LLP

By _____
Harvey L. Leiderman
Attorneys for Board of Administration For Police
and Fire Department Retirement Plan of City of
San Jose and Federated City Employees
Retirement System, Necessary Party in Interest

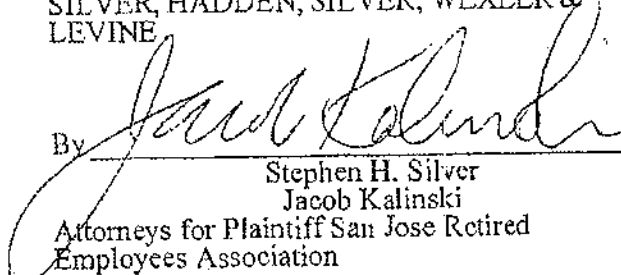
Dated: April __, 2013

CARROLL, BURDICK & McDONOUGH LLP

By _____
Gregg McLean Adam
Amber L. West
Attorneys for Plaintiff and Cross-Defendant
San Jose Police Officers' Association

Dated: April 22, 2013

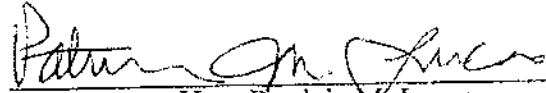
SILVER, HADDEN, SILVER, WEXLER &
LEVINE

By  _____
Stephen H. Silver
Jacob Kalinski
Attorneys for Plaintiff San Jose Retired
Employees Association

ORDER

The foregoing Stipulation having been received and good cause appearing,
IT IS SO ORDERED:

Dated: April 23, 2013



Hon. Patricia M. Lucas
Judge of the Superior Court

EXHIBIT B

1 TEAGUE P. PATERSON, SBN 226659
2 VISHTASP M. SOROUSHIAN, SBN 278895
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8 Email: tpaterson@beesontayer.com
9 vsoroushian@beesontayer.com

10 Attorneys for Plaintiff
11 *AFSCME LOCAL 101*

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SANTA CLARA**
15 **AT SAN JOSÉ**

16 **SAN JOSE POLICE OFFICERS'**
17 **ASSOCIATION,**

18 Plaintiff,

19 v.

20 **CITY OF SAN JOSÉ, BOARD OF**
21 **ADMINISTRATION FOR POLICE AND FIRE**
22 **DEPARTMENT RETIREMENT PLAN OF**
23 **CITY OF SAN JOSE, and DOES 1-10,**
24 **inclusive,**

25 Defendants.

Consolidated Case No. 1-12-CV-225926

[Consolidated with Case Nos. 1-12-CV-225928,
1-12-CV-226570, 1-12-CV-226574,
1-12-CV-227864, and 1-12-CV-233660]

ASSIGNED FOR ALL PURPOSES TO:
JUDGE PATRICIA LUCAS
DEPARTMENT 2

**FINAL TRIAL WITNESS AND EXHIBIT
LIST**

Complaint Filed: July 5, 2012
Trial Date: July 22, 2013

26 **AND RELATED CROSS-COMPLAINT AND**
27 **CONSOLIDATED ACTIONS**

28 Pursuant to the parties' Stipulation and Order Regarding Pre-Trial and Trial Schedule
("Order"), ordered by the Hon. Patricia Lucas on April 23, 2013, Plaintiff/Petitioner AFSCME Local
101 ("AFSCME") submits the following final trial witness list. Furthermore, AFSCME submits the

1 following final list of exhibits ("Final List") proposed for joint stipulation as to authenticity.
2 AFSCME stipulates to the authenticity of the documents within its Final List, and said documents are
3 listed within **Exhibit A**, which it incorporates by reference as though fully set forth herein.

4 **FINAL TRIAL WITNESS LIST**

5 AFSCME names the following trial witnesses it has identified at this time: Daniel Doonan,
6 Charles Allen, Margaret Martinez, Carol Garcia, Jeff Rhoads, Carlos Garcia, Valerie Esquivel, Peggy
7 Horning, and Scott Martin. Below, AFSCME provides the summary of Dan Doonan's expected
8 testimony. AFSCME already provided the City with the Declaration of Charles Allen in support of
9 its Opposition to the City's Motion for Summary Adjudication. It also previously provided the
10 Declaration of Margaret Martinez. It may submit declarations for the remaining witnesses.

11 AFSCME reserves the right not to call any of the named individuals at trial.

12 **SUMMARY OF TESTIMONY**

13 The following summarizes the expected trial testimony of Daniel Doonan. AFSCME reserves
14 the right to examine Mr. Doonan regarding issues beyond those described below, and also it reserves
15 the right to abstain from questioning him about any of the issues described below.

16 **Daniel Doonan:**

17 Daniel Doonan is a Labor Economist III for AFSCME. He will provide an economic analysis
18 of Measure B and its impact and will testify consistently with his declaration testimony provided in
19 support of AFSCME Local 101's Opposition to Defendants' Motion for Summary Adjudication.

20 **Carlos Garcia, Valerie Esquivel, Peggy Horning, and Scott Martin:**

21 The following individuals will testify as to the retirement benefits they were promised as well
22 as the impact on them of Measure B. Their declarations may follow.

23
24 Dated: June 20, 2013

BEESON, TAYER & BODINE, APC

25
26 By: 

TEAGUE F. PATERSON
VISHTASP M. SOROUSHIAN
Attorneys for AFSCME LOCAL 101

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607-4051. On this day, I served the foregoing Document(s):

FINAL TRIAL WITNESS AND EXHIBIT LIST

☐ **By Mail** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☐ **By Personally Delivering** a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.

☐ **By Messenger Service** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure § 1011, by placing a true and correct copy thereof in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service.

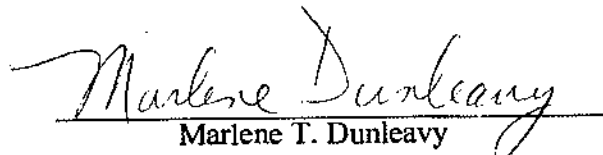
☐ **By UPS Overnight Delivery** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.

☐ **By Facsimile Transmission** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).

☒ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, June 20, 2013.


Marlene T. Dunleavy

SERVICE LIST

Greg McLean Adam, Esq.
Jonathan Yank, Esq.
Gonzalo C. Martinez, Esq.
Amber L. West, Esq.
CARROLL, BURDICK & McDONOUGH LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104

*Attorneys for Plaintiff, SAN JOSE POLICE
OFFICERS' ASSOCIATION (Santa Clara
Superior Court Case No. 112CV225926)*

John McBride, Esq.
Christopher E. Platten, Esq.
Mark S. Renner, Esq.
WYLIE, McBRIDE, PLATTEN & RENNER
2125 Canoas Garden Avenue, Suite 120
San Jose, CA 95125

*Attorneys for Plaintiffs/Petitioners, ROBERT
SAPIEN, MARY McCARTHY, THANH HO,
RANDY SEKANY AND KEN HEREDIA (Santa
Clara Superior Court Case No. 112-CV-225928)*

AND

*Plaintiffs/Petitioners, JOHN MUKHAR, DALE
DAPP, JAMES ATKINS, WILLIAM
BUFFINGTON AND KIRK PENNINGTON (Santa
Clara Superior Court Case No. 112-CV-226574)*

AND

*Plaintiffs/Petitioners, TERESA HARRIS, JON
REGER, MOSES SERRANO (Santa Clara
Superior Court Case No. 112-CV-226570)*

Arthur A. Hartinger, Esq.
Jennifer L. Nock, Esq.
Linda M. Ross, Esq.
Michael C. Hughes
MEYERS, NAVE, RIBACK, SILVER &
WILSON
555 12th Street, Suite 1500
Oakland, CA 94607

*Attorneys for Defendants, THE CITY OF SAN
JOSE AND DEBRA FIGONE*

Harvey L. Leiderman, Esq.
REED SMITH, LLP
101 Second Street, Suite 1800
San Francisco, CA 94105

*Attorneys for Defendant, CITY OF SAN JOSE,
BOARD OF ADMINISTRATION FOR POLICE
AND FIRE DEPARTMENT RETIREMENT
PLAN OF CITY OF SAN JOSE (Santa Clara
Superior Court Case No. 112CV225926)*

AND

*Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE 1961 SAN JOSE
POLICE AND FIRE DEPARTMENT
RETIREMENT PLAN (Santa Clara Superior
Court Case No. 112CV225928)*

AND

*Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE 1975
FEDERATED CITY EMPLOYEES'
RETIREMENT PLAN (Santa Clara Superior
Court Case Nos. 112CV226570 and
112CV22574)*

AND

*Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE FEDERATED
CITY EMPLOYEES RETIREMENT PLAN
(Santa Clara Superior Court Case No.
112CV227864)*

1 Stephen H. Silver, Esq.
2 Richard A. Levine, Esq.
3 Jacob A. Kalinski, Esq.
4 SILVER, HADDEN, SILVER, WEXLER &
5 LEVINE
6 1428 Second Street, Suite 200
7 Santa Monica, CA 90401-2367

8 *Attorneys for Plaintiffs, SAN JOSE RETIRED*
9 *EMPLOYEES ASSOCIATION, HOWARD E.*
10 *FLEMING, DONALD S. MACRAE, FRANCES J.*
11 *OLSON, GARY J. RICHERT and ROSALINDA*
12 *NAVARRO (Santa Clara Superior Court Case No.*
13 *112CV233660)*

EXHIBIT C

1 Arthur A. Hartinger (SBN: 121521)
ahartinger@meyersnave.com
2 Linda M. Ross (SBN: 133874)
lross@meyersnave.com
3 Jennifer L. Nock (SBN: 160663)
jnock@meyersnave.com
4 Michael C. Hughes (SBN: 215694)
mhughes@meyersnave.com
5 MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12th Street, Suite 1500
6 Oakland, California 94607
Telephone: (510) 808-2000
7 Facsimile: (510) 444-1108
8 Attorneys for Defendants and Cross-Plaintiff
City of San Jose and Defendant Debra Figone,
9 in Her Official Capacity

10 **IN THE SUPERIOR COURT FOR THE**
11 **COUNTY OF SANTA CLARA**

12 SAN JOSE POLICE OFFICERS
ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE, BOARD OF
16 ADMINISTRATION FOR POLICE AND
FIRE RETIREMENT PLAN OF CITY OF
17 SAN JOSE, and DOES 1-10 inclusive,

18 Defendants.

19 AND RELATED CROSS-COMPLAINT
20 AND CONSOLIDATED ACTIONS

Consolidated Case No. 1-12-CV-225926

*[And Consolidated with Case Nos.
112CV225928, 112CV226570, 112CV226574,
1-12-CV-227864 and 112CV233660]*

*Assigned for all purposes to the Honorable
Patricia M. Lucas*

**CITY'S NOTICE OF ORAL
DEPOSITIONS AND REQUEST FOR
PRODUCTION OF DOCUMENTS**

Complaint Filed: June 16, 2012
Trial Date: July 22, 2013

21
22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that, pursuant to Code of Civil Procedure § 2025.010, et seq.,
24 Defendant City of San Jose ("City") will take the oral depositions of the following individuals at
25 the times and locations specified below:

26 ///

27 ///

28 ///

1 AFSCME v. City of San Jose:

2 1. **Carol Garcia – July 1, 2013 at 11:00 a.m.**

3 Location: Meyers Nave, 555 12th Street, Suite 1500, Oakland, CA 94707

4 2. **Jeff Rhoads – July 1, 2013 at 3:00 p.m.**

5 Location: Meyers Nave, 555 12th Street, Suite 1500, Oakland, CA 94707

6 3. **Carlos Garcia – July 1, 2013 at 4:00 p.m.**

7 Location: Meyers Nave, 555 12th Street, Suite 1500, Oakland, CA 94707

8 4. **Valerie Esquivel – July 8, 2013 at 9:00 a.m.**

9 Location: Meyers Nave, 555 12th Street, Suite 1500, Oakland, CA 94707

10 5. **Peggy Horning – July 8, 2013 at 1:00 p.m.**

11 Location: Meyers Nave, 555 12th Street, Suite 1500, Oakland, CA 94707

12 6. **Scott Martin– July 8, 2013 at 2:30 p.m.**

13 Location: Meyers Nave, 555 12th Street, Suite 1500, Oakland, CA 94707

14 These depositions will be conducted pursuant to Code of Civil Procedure § 2025.010 et
15 seq., before a qualified Notary Public, or other officer authorized to administer oaths.

16 Notice is further given that under Code of Civil Procedure §2025.330(c), the deposition
17 testimony may be recorded by audio and video tape and by instant visual display of the testimony.
18 Said deposition shall continue from day to day, holidays and weekends excluded, until completed.

19 **DOCUMENTS TO BE PRODUCED**

20 NOTICE IS FURTHER GIVEN THAT pursuant to Code of Civil Procedure section
21 2025.220(a)(4), each deponent is required to produce, at the beginning of the deposition, the
22 following original documents (if the deponent is not in possession or control of the originals, then
23 the deponent shall produce legible copies thereof):

24 1. All proposals by unions representing employees of the City of San Jose, or by
25 representatives or members of the unions, to the City of San Jose, from the year 2008 to the
26 present, concerning employee pension contributions, employee contributions towards retiree
27 health care, retiree medical benefits and/or the Supplemental Retiree Benefit Reserve.

28 ///

- 1 2. All correspondence provided to the City concerning any aspect of Measure B.
2 3. All documents that demonstrate or evidence any complaint made against the City
3 of San Jose concerning the legality of Measure B.
4 4. All documents containing any representation by the City regarding what pension or
5 other post employment benefits are vested.
6

7 DATED: June 24, 2013

MEYERS, NAVE, RIBACK, SILVER & WILSON

8
9 By: _____

10 Arthur A. Hartinger
11 Linda M. Ross
12 Michael C. Hughes
13 Attorneys for Defendant and Cross-Plaintiff City of
14 San Jose, and Defendant Debra Figone, in Her Official
15 Capacity
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On June 24, 2013, I served true copies of the following documents described as

**CITY'S NOTICE OF ORAL DEPOSITIONS AND REQUEST FOR PRODUCTION
OF DOCUMENTS**

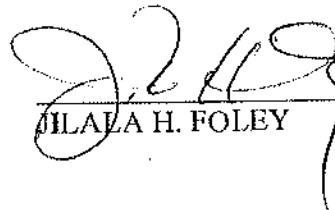
on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY FEDEX: I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 24, 2013, at Oakland, California.


MILALA H. FOLEY

SERVICE LIST

<p>John McBride Christopher E. Platten Mark S. Renner WYLIE, MCBRIDE, PLATTEN & RENNER 2125 Canoas Garden Ave, Suite 120 San Jose, CA 95125</p> <p><u>E-MAIL:</u></p> <p>jmcbride@wnprlaw.com cplatten@wnprlaw.com mrenner@wnprlaw.com</p>	<p>Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN, MARY MCCARTHY, THANH HO, RANDY SEKANY AND KEN HEREDIA (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112CV226574)</p> <p>AND</p> <p>Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112CV226570)</p>
<p>Gregg McLean Adam Jonathan Yank Gonzalo Martinez Jennifer Stoughton Amber L. West CARROLL, BURDICK & MCDONOUGH, LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104</p> <p><u>E-MAIL:</u></p> <p>gadam@cbmlaw.com jyank@cbmlaw.com gmartinez@cbmlaw.com jstoughton@cbmlaw.com awest@cbmlaw.com</p>	<p>Attorneys for Plaintiff, SAN JOSE POLICE OFFICERS' ASSOC. (Santa Clara Superior Court Case No. 112CV225926)</p>
<p>Teague P. Paterson Vishtap M. Soroushian BEESON, TAYER & BODINE, APC Ross House, 2nd Floor 483 Ninth Street Oakland, CA 94607-4051</p> <p><u>E-MAIL:</u></p> <p>tpaterson@beesontayer.com; vsoroushian@beesontayer.com;</p>	<p>Plaintiff, AFSCME LOCAL 101 (Santa Clara Superior Court Case No. 112CV227864)</p>

1 Harvey L. Leiderman
2 Jeffrey R. Rieger
3 REED SMITH, LLP
4 101 Second Street, Suite 1800
5 San Francisco, CA 94105

6 E-MAIL:

7 hleiderman@reedsmith.com;
8 jreiger@reedsmith.com

Attorneys for Defendant, CITY OF SAN JOSE,
BOARD OF ADMINISTRATION FOR POLICE AND
FIRE DEPARTMENT RETIREMENT PLAN OF
CITY OF SAN JOSE
(Santa Clara Superior Court Case No. 112CV225926)

AND

Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE 1961 SAN JOSE
POLICE AND FIRE DEPARTMENT RETIREMENT
PLAN
(Santa Clara Superior Court Case No. 112CV225928)

AND

Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE 1975 FEDERATED
CITY EMPLOYEES' RETIREMENT PLAN
(Santa Clara Superior Court Case Nos. 112CV226570
and 112CV226574)

AND

Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE FEDERATED CITY
EMPLOYEES RETIREMENT PLAN
(Santa Clara Superior Court Case No. 112CV227864)

16 Stephen H. Silver, Esq.
17 Richard A. Levine, Esq.
18 Jacob A. Kalinski, Esq.
19 Silver, Hadden, Silver, Wexler &
20 Levine
21 1428 Second Street, Suite 200
22 P.O. Box 2161
23 Santa Monica, California 90401
24 email: shsilver@shslaborlaw.com

Attorneys for Plaintiffs/Petitioners
SAN JOSE RETIRED EMPLOYEES ASSOCIATION,
HOWARD E. FLEMING, DONALD S. MACRAE,
FRANCES J. OLSON, GARY J. RICHERT AND
ROSALINDA NAVARRO

EXHIBIT D

DUANE B. BEESON
NEIL BOGINE
ROBERT BONSALE
GEOFFREY FILLER
CATHERINE E. AROSTEGUI
JOHN C. PROVOST
ANGREW H. BAKER
SHEILA K. SEXTON
MATTHEW MORBELLO
DALE L. BRODSKY
TEAGUE P. PATERSON
COSTA KERESTENZIS
DAVID WEINTRAUB
MARGARET A. GEDDES
SARAH SANDFORD-SMITH
PETER M. MCENTEE
SUSAN K. GAREA
VISHTASP SOROUSHIAN
ADRIAN BARNES
CHRISTOPHER HAMMER
DALISAI NISPEROS

BEESON, TAYER & BODINE

ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
ROSS HOUSE, SUITE 200
483 NINTH STREET
OAKLAND, CALIFORNIA 94607-4051
(510) 625-9700
FAX (510) 625-8275



SACRAMENTO OFFICE
520 CAPITOL MALL
SUITE 300
SACRAMENTO, CA 95814-4714
(916) 325-2100
FAX (916) 325-2120

DONALD S. TAYER
(932-2001)

WWW.BEESONTAYER.COM

vsoragushian@beesontayer.com

June 25, 2013

Sent by Facsimile & U.S. Mail

Arthur A. Hartinger, Esq.
Meyers, Nave, Riback, Silver & Wilson
555 - 12th Street, Suite 1500
Oakland, CA 94607

Re: *San Jose Police Officers' Association, et al. v. City of San Jose, et al.*
Santa Clara Superior Court Case No. 1-12-CV-225926

Dear Art:

We are in receipt of the City of San Jose's Notices of Oral Deposition and Request for Production of Documents, served on June 17 and June 24, 2013, in which the City noticed the depositions of the following individuals: Margaret Martinez, Carol Garcia, Jeff Rhoads, Carlos Garcia, Valerie Esquivel, Peggy Horning, and Scott Martin. Although we will consult with the aforementioned individuals regarding their availability for deposition, please be informed that counsel is unavailable during those dates. Since we were not consulted in advance to the noticing of these dates, we request that these depositions be noticed for later dates. I will be out of the office until Thursday, but would be happy to meet and confer over this at that time.

We also request that, with respect to the active employees noticed for deposition, the City either schedule their depositions after their work hours to permit them time to get to the deposition or to grant them paid work leave time.

Very truly yours,

Vishtasp M. Soroushian

VMS/tg

cc: Linda A. Ross
Michael Hughes

EXHIBIT E

Hughes, Michael

From: Hughes, Michael
Sent: Tuesday, June 25, 2013 12:04 PM
To: 'Vishtasp M. Soroushian'; Teague Paterson (TPaterson@beesonayer.com)
Cc: Hartinger, Art; Geoff Spellberg (gspellberg@meyersnave.com); Ross, Linda; Ellen Deniken (edeniken@meyersnave.com); Foley, Jilala; Kathy Thomas (kthomas@meyersnave.com)
Subject: RE: City of San Jose's Exhibit List

Hi Vish,

I'll work with you on the below request and also on scheduling the depositions.

In terms of the docs, I'll go through everything, talk with our folks and see if there's a stip that works.

In terms of the depositions, we need to get them done by July 9th – that date is less than two weeks before trial. Can you propose some dates and times in that framework that work for your witnesses?

Thanks,

Mike

From: Vishtasp M. Soroushian [<mailto:VSoroushian@beesonayer.com>]
Sent: Monday, June 24, 2013 6:27 PM
To: Hughes, Michael
Cc: Teague Paterson; Ross, Linda
Subject: RE: City of San Jose's Exhibit List

Michael:

I hope you are well. I've reviewed your Final Exhibit List and--in the interest of not devoting more trial time than necessary to evidentiary issues--offer to stipulate to the authenticity of your documents with the exception of your demonstrative exhibits (starting at Exh. 6000); essentially everything up through Ex. No 5907. Of course, we would like the opportunity to review the documents the City has not yet produced. In exchange, we ask that the City stipulate to the authenticity of the documents within our proposed exhibit list, at least insofar as they were produced by or for, addressed to, or maintained by the City or Retirement Board.

Please feel free to contact me with your thoughts. I will be out of town until Thursday but can be reached on my cellphone until then.

Thanks,

Vish Soroushian



Beeson, Tayer & Bodine

483 9th St., Suite 200
Oakland, CA 94607
www.beesontayer.com
W: 510-625-9700
C: 530-312-3593
510-625-8275 Fax
vsoroushian@beesontayer.com

CONFIDENTIALITY NOTICE:

The information contained in this communication from vsoroushian@beesontayer.com sent at 2013-06-24 21:26:50 (Eastern) may contain confidential and/or privileged information. It is intended solely for use by mhughes@meyersnave.com and others authorized to receive it. If you are not mhughes@meyersnave.com you must not use, copy, disclose or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by reply e-mail and delete this message. Thank you for your cooperation.

CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that, unless expressly stated otherwise, any federal tax advice or analysis contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties imposed under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication.

EXHIBIT F

Hughes, Michael

From: Hughes, Michael
Sent: Thursday, June 27, 2013 9:56 AM
To: Vishtasp Soroushian (V5oroushian@beesontayer.com)
Cc: Hartinger, Art; Spellberg, Geoff; Ross, Linda; Ellen Deniken (edeniken@meyersnave.com); Jilala H. Foley (jfoley@meyersnave.com); Kathy Thomas (kthomas@meyersnave.com)
Subject: Depo Slots

Hi Vish,

Here's the info we discussed:

The witnesses – both actives and retirees – will need to be deposed during business hours.

We can do the following in San Jose (this presumes we get a full day of witnesses – if it's just one witness on a given day, the witness will need to come to Oakland):

All day, Monday, July 1
All day, Tuesday, July 2
All day, Wednesday, July 3 [but I think this is out due to your travel plans]
All day, Tuesday, July 9
All day, Wednesday, July 10
All day, Thursday, July 11

For Oakland, we can do:

All day, Monday, July 1
Afternoon of Tuesday, July 2
Monday, July 8 until 2:00

Take a look and let's talk early afternoon.

Mike

Michael C. Hughes
Attorney
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Tel: (510) 808-2000
Email: mhughes@meyersnave.com

EXHIBIT G

Hughes, Michael

From: Vishtasp M. Soroushian <VSoroushian@beesontayer.com>
Sent: Thursday, June 27, 2013 3:42 PM
To: Hughes, Michael
Cc: Teague Paterson; Spellberg, Geoff; Ross, Linda
Subject: RE: Depo Slots

Hi Mike:

Thanks for the update. I have reached out to our witnesses and have so far been in touch with two of them. Here is what information I have so far:

- Carol Garcia is out of town and unavailable starting tomorrow (June 28) through July 19.
- Jeff Rhoads is available for deposition in San Jose the mornings of Tuesday, July 9; Wednesday, July 10; or Thursday, July 11

Since this case was filed in San José, AFSCME's witnesses will appear for deposition in San José.

I will keep you updated as I touch base with the rest of the witnesses.

Best,

Vish Soroushian



Beeson, Tayer & Bodine
510-625-9700
510-625-8275 Fax

From: Hughes, Michael [<mailto:mhughes@meyersnave.com>]
Sent: Thursday, June 27, 2013 2:26 PM
To: Vishtasp M. Soroushian
Cc: Spellberg, Geoff; Ross, Linda
Subject: RE: Depo Slots

Hi Vish,

Recent change -- July 2nd in San Jose is no longer available.

Mike

From: Vishtasp M. Soroushian [<mailto:VSoroushian@beesontayer.com>]
Sent: Thursday, June 27, 2013 11:08 AM
To: Hughes, Michael
Subject: RE: Depo Slots

Mike:

Thanks for the info. I am contacting members and we can touch base later.

Why do the witnesses need to be deposed during business hours? Is it because the location can only facilitate us during those time?

Thanks,

Vish Soroushian



Beeson, Tayer & Bodine
510-625-9700
510-625-8275 Fax

From: Hughes, Michael [<mailto:mhughes@meyersnave.com>]
Sent: Thursday, June 27, 2013 9:56 AM
To: Vishtasp M. Soroushian
Cc: Hartinger, Art; Spellberg, Geoff; Ross, Linda; Deniken, Ellen; Foley, Jilala; Thomas, Kathy
Subject: Depo Slots

Hi Vish,

Here's the info we discussed:

The witnesses – both actives and retirees – will need to be deposed during business hours.

We can do the following in San Jose (this presumes we get a full day of witnesses – if it's just one witness on a given day, the witness will need to come to Oakland):

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All day, Tuesday, July 2
All day, Wednesday, July 3 [but I think this is out due to your travel plans]
All day, Tuesday, July 9
All day, Wednesday, July 10
All day, Thursday, July 11

For Oakland, we can do:

All day, Monday, July 1
Afternoon of Tuesday, July 2
Monday, July 8 until 2:00

Take a look and let's talk early afternoon.

Mike

Michael C. Hughes
Attorney

Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Tel: (510) 808-2000
Email: mhughes@meyersnave.com

CONFIDENTIALITY NOTICE:

The information contained in this communication from vsoroushian@beesontayer.com sent at 2013-06-27 14:07:55 (Eastern) may contain confidential and/or privileged information. It is intended solely for use by mhughes@meyersnave.com and others authorized to receive it. If you are not mhughes@meyersnave.com you must not use, copy, disclose or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by reply e-mail and delete this message. Thank you for your cooperation.

CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that, unless expressly stated otherwise, any federal tax advice or analysis contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties imposed under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication.

EXHIBIT H

VIA EMAIL AND HAND DELIVERY

July 1, 2013

Vishtap M. Soroushian
BEESON, TAYER & BODINE, APC
Ross House, 2nd Floor
483 Ninth Street
Oakland, CA 94607-4051

Re: SJPOA v. City of San Jose

Dear Vish:

I write regarding the depositions of AFSCME's trial witnesses.

You stated in a June 27, 2013 email that, "Carol Garcia is out of town and unavailable starting tomorrow (June 28) through July 19." We consider this a refusal to produce her for deposition and will file a motion in limine to exclude her from testifying at trial.

We had previously noticed the depositions of six AFSCME trial witnesses but, at your request, agreed to continue those depositions. We further agreed to take those depositions in San Jose at your request. You subsequently provided us with dates for three witnesses (Jeff Rhoads, Scott Martin, and Margaret Martinez), and we have notice their depositions accordingly.

Because you have not provided us with dates for the three remaining witnesses, we have noticed their depositions for the week of July 9th to 12th. We did not set any depositions on July 8th because you informed us that both you and Teague Patterson are on vacation. We also set those depositions in San Jose for the convenience of your witnesses.

The Court's April 23, 2013 pretrial order provides that:

Any witness designated as a trial witness by a brief statement or as a witness by declaration shall be made available for deposition as requested.

We remain willing to discuss alternate dates and times for the week of July 8th to July 12th. However, in the absence of a mutually convenient alternate date, we will take all six witnesses' depositions as noticed. If they do not appear, we will move to exclude them from testifying at trial.

Finally, the notice of deposition that we emailed you on Friday, June 28th contained a typo. The deposition of witness Valerie Esquivel will take place on Thursday, July 11, 2013 at 11:00 a.m. not 11:00 p.m. I have included an amended notice with this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael C. Hughes", with a stylized flourish at the end.

Michael C. Hughes

MCH:jhf
2104738.1

Enclosure

cc: Harvey L. Leiderman
Christopher E. Platten
Stephen H. Silver
Gregg McLean Adam

EXHIBIT I

1 Arthur A. Hartinger (SBN: 121521)
ahartinger@meyersnave.com
2 Linda M. Ross (SBN: 133874)
lross@meyersnave.com
3 Jennifer L. Nock (SBN: 160663)
jnock@meyersnave.com
4 Michael C. Hughes (SBN: 215694)
mhughes@meyersnave.com
5 MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12th Street, Suite 1500
6 Oakland, California 94607
Telephone: (510) 808-2000
7 Facsimile: (510) 444-1108

8 Attorneys for Defendants and Cross-Plaintiff
City of San Jose and Defendant Debra Figone,
9 in Her Official Capacity

10 IN THE SUPERIOR COURT FOR THE
11 COUNTY OF SANTA CLARA

12 SAN JOSE POLICE OFFICERS
ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE, BOARD OF
16 ADMINISTRATION FOR POLICE AND
FIRE RETIREMENT PLAN OF CITY OF
17 SAN JOSE, and DOES 1-10 inclusive,

18 Defendants.

19 AND RELATED CROSS-COMPLAINT
20 AND CONSOLIDATED ACTIONS

Consolidated Case No. 1-12-CV-225926

[And Consolidated with Case Nos.
112CV225928, 112CV226570, 112CV226574,
1-12-CV-227864 and 112CV233660]

Assigned for all purposes to the Honorable
Patricia M. Lucas

CITY'S SECOND AMENDED NOTICE
OF ORAL DEPOSITIONS AND
REQUEST FOR PRODUCTION OF
DOCUMENTS

Complaint Filed: June 16, 2012
Trial Date: July 22, 2013

21
22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that, pursuant to Code of Civil Procedure § 2025.010, et seq.,
24 Defendant City of San Jose ("City") will take the oral depositions of the following individuals at
25 the times and locations specified below:

26 ///

27 ///

28 ///

Case No. 112CV225926

Plaintiff San Jose Police Officers' Association:

1. **Pete Salvi – Friday, July 12, 2013 at 1:30 p.m.**

Location: Talty Court Reporting, 2131 The Alameda, Suite D, San Jose, CA 95126

2. **Mike Fehr – Friday, July 12, 2013 at 3:30 p.m.**

Location: Talty Court Reporting, 2131 The Alameda, Suite D, San Jose, CA 95126

Sapien, et al., Harris, et al., Mukhar, et al.:

3. **Nancy Ostrowski – Monday, July 8, 2013 at 1:00 p.m.**

Location: Wylie, McBride, Platten & Renner, 2125 Canoas Garden Ave.,
Suite 120, San Jose, California, 95125

4. **Kenneth Heredia – Tuesday, July 9, 2013 at 9:00 a.m.**

Location: Talty Court Reporting, 2131 The Alameda, Suite D, San Jose, CA 95126

5. **Randy Sekany – Tuesday, July 9, 2013 at 1:00 p.m.**

Location: Talty Court Reporting, 2131 The Alameda, Suite D, San Jose, CA 95126

AFSCME v. City of San Jose:

6. **Jeff Rhoads – Tuesday, July 9, 2013 at 10:30 a.m.**

Location: Talty Court Reporting, 2131 The Alameda, Suite D, San Jose, CA 95126

7. **Carlos Garcia – Tuesday, July 9, 2013 at 3:00 p.m.**

Location: Talty Court Reporting, 2131 The Alameda, Suite D, San Jose, CA 95126

8. **Scott Martin – Thursday, July 11, 2013 at 9:30 a.m.**

Location: Talty Court Reporting, 2131 The Alameda, Suite D, San Jose, CA 95126

9. **Valerie Esquivel – Thursday, July 11, 2013 at 11:00 a.m.**

Location: Talty Court Reporting, 2131 The Alameda, Suite D, San Jose, CA 95126

10. **Margaret Martinez – Thursday, July 11, 2013 at 2:00 p.m.**

Location: Talty Court Reporting, 2131 The Alameda, Suite D, San Jose, CA 95126

11. **Peggy Horning – Thursday, July 11, 2013 at 3:30 p.m.**

Location: Talty Court Reporting, 2131 The Alameda, Suite D, San Jose, CA 95126

///

///

3 Notice is further given that under Code of Civil Procedure § 2025.330(c), the deposition
4 testimony may be recorded by audio and video tape and by instant visual display of the testimony.
5 Said deposition shall continue from day to day, holidays and weekends excluded, until completed.
6 If the depositions are recorded by video tape, the City reserves its right to use at trial video
7 recordings of the depositions of the expert witnesses pursuant to Code of Civil Procedure §
8 2025.620(d).

10 NOTICE IS FURTHER GIVEN THAT pursuant to Code of Civil Procedure section
11 2025.220(a)(4), each deponent is required to produce, at the beginning of the deposition, the
12 following original documents (if the deponent is not in possession or control of the originals, then
13 the deponent shall produce legible copies thereof):

21 4. All documents containing any representation by the City regarding what pension or
22 other post employment benefits are vested.

MEYERS, NAVE, RIBACK, SILVER & WILSON

Arthur A. Hartinger
Linda M. Ross
Michael C. Hughes
Attorneys for Defendant and Cross-Plaintiff City of
San Jose, and Defendant Debra Figone, in Her Official
Capacity

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On July 1, 2013, I served true copies of the following documents described as

**CITY'S SECOND AMENDED NOTICE OF ORAL DEPOSITIONS AND
REQUEST FOR PRODUCTION OF DOCUMENTS**

on the interested parties in this action as follows:

BY HAND DELIVERY: I caused such envelope(s) to be delivered by hand to the office of the addressee(s)

Teague P. Paterson
Vishtap M. Soroushian
BEESON, TAYER & BODINE,
APC
Ross House, 2nd Floor
483 Ninth Street
Oakland, CA 94607-4051

E-MAIL:
tpaterson@beesontayer.com;
vsoroushian@beesontayer.com;

Plaintiff, AFSCME LOCAL 101
(Santa Clara Superior Court Case No. 112CV227864)

Gregg McLean Adam
Jonathan Yank
Gonzalo Martinez
Jennifer Stoughton
Amber L. West
CARROLL, BURDICK &
MCDONOUGH, LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104

Attorneys for Plaintiff, SAN JOSE POLICE
OFFICERS' ASSOC.
(Santa Clara Superior Court Case No. 112CV225926)

E-MAIL:
gadam@cbmlaw.com
jyank@cbmlaw.com
gmartinez@cbmlaw.com
jstoughton@cbmlaw.com
awest@cbmlaw.com

1 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
2 document(s) to be sent from e-mail address jfoley@meyersnave.com to the persons at the e-mail
3 addresses listed in the Service List. I did not receive, within a reasonable time after the
4 transmission, any electronic message or other indication that the transmission was unsuccessful.

5 Teague P. Paterson
6 Vishtap M. Soroushian
7 BEESON, TAYER & BODINE,
8 APC
9 Ross House, 2nd Floor
10 483 Ninth Street
11 Oakland, CA 94607-4051

12 E-MAIL:

13 tpaterson@beesonayer.com;
14 vsoroushian@beesonayer.com;

Plaintiff, AFSCME LOCAL 101
(Santa Clara Superior Court Case No. 112CV227864)

15 Gregg McLean Adam
16 Jonathan Yank
17 Gonzalo Martinez
18 Jennifer Stoughton
19 Amber L. West
20 CARROLL, BURDICK &
21 MCDONOUGH, LLP
22 44 Montgomery Street, Suite 400
23 San Francisco, CA 94104

24 E-MAIL:

25 gadam@cbmlaw.com
26 jyank@cbmlaw.com
27 gmartinez@cbmlaw.com
28 jstoughton@cbmlaw.com
awest@cbmlaw.com

Attorneys for Plaintiff, SAN JOSE POLICE
OFFICERS' ASSOC.
(Santa Clara Superior Court Case No. 112CV225926)

John McBride
Christopher E. Platten
Mark S. Renner
WYLIE, MCBRIDE, PLATTEN &
RENNER
2125 Canoas Garden Ave, Suite 120
San Jose, CA 95125

E-MAIL:

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cplatten@wmpirlaw.com
mrenner@wmpirlaw.com

Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN,
MARY MCCARTHY, THANH HO, RANDY
SEKANY AND KEN HEREDIA
(Santa Clara Superior Court Case No. 112CV225928)

AND

Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP,
JAMES ATKINS, WILLIAM BUFFINGTON AND
KIRK PENNINGTON
(Santa Clara Superior Court Case No. 112CV226574)

AND

Plaintiffs/Petitioners, TERESA HARRIS, JON REGER,
MOSES SERRANO
(Santa Clara Superior Court Case No. 112CV226570)

1 Harvey L. Leiderman
2 Jeffrey R. Rieger
3 REED SMITH, LLP
4 101 Second Street, Suite 1800
5 San Francisco, CA 94105

6 E-MAIL:

7 hleiderman@reedsmith.com;
8 jreiger@reedsmith.com

Attorneys for Defendant, CITY OF SAN JOSE,
BOARD OF ADMINISTRATION FOR POLICE AND
FIRE DEPARTMENT RETIREMENT PLAN OF
CITY OF SAN JOSE
(Santa Clara Superior Court Case No. 112CV225926)

AND

Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE 1961 SAN JOSE
POLICE AND FIRE DEPARTMENT RETIREMENT
PLAN
(Santa Clara Superior Court Case No. 112CV225928)

AND

Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE 1975 FEDERATED
CITY EMPLOYEES' RETIREMENT PLAN
(Santa Clara Superior Court Case Nos. 112CV226570
and 112CV226574)

AND

Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE FEDERATED CITY
EMPLOYEES RETIREMENT PLAN
(Santa Clara Superior Court Case No. 112CV227864)

16 Stephen H. Silver, Esq.
17 Richard A. Levine, Esq.
18 Jacob A. Kalinski, Esq.
19 Silver, Hadden, Silver, Wexler &
20 Levine
21 1428 Second Street, Suite 200
22 P.O. Box 2161
23 Santa Monica, California 90401
24 email: shsilver@shslaborlaw.com

Attorneys for Plaintiffs/Petitioners
SAN JOSE RETIRED EMPLOYEES ASSOCIATION,
HOWARD E. FLEMING, DONALD S. MACRAE,
FRANCES J. OLSON, GARY J. RICHERT AND
ROSALINDA NAVARRO

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct.

27 Executed on July 1, 2013, at Oakland, California.

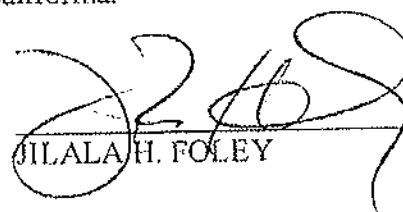
28 
JILALA H. FOLEY

EXHIBIT J

Hughes, Michael

From: Vishtasp M. Soroushian <VSoroushian@beesontayer.com>
Sent: Tuesday, July 02, 2013 10:13 AM
To: Hughes, Michael
Cc: Teague Paterson; Foley, Jilala
Subject: RE: Depo Slots

Good morning Mike:

Ms. Peggy Horning is available for a deposition in San Jose on Monday, July 15, or Tuesday, July 16, preferably in the afternoon. The previous week does not work for her.

Thanks,
Vish Soroushian



Beeson, Tayer & Bodine
510-625-9700
510-625-8275 Fax

From: Hughes, Michael [mailto:mhughes@meyersnave.com]
Sent: Friday, June 28, 2013 1:47 PM
To: Vishtasp M. Soroushian
Cc: Foley, Jilala
Subject: RE: Depo Slots

Hi Vish – I'm just confirming that the depositions of AFSCME witnesses still scheduled for Monday are being continued. My schedule now shows no depositions of AFSCME witnesses next week (July 1 to 3). Mike

From: Vishtasp M. Soroushian [mailto:VSoroushian@beesontayer.com]
Sent: Friday, June 28, 2013 9:50 AM
To: Hughes, Michael
Subject: RE: Depo Slots

Apologies. Margaret Martinez.

Vish Soroushian



Beeson, Tayer & Bodine
510-625-9700
510-625-8275 Fax

From: Hughes, Michael [mailto:mhughes@meyersnave.com]
Sent: Friday, June 28, 2013 9:49 AM

To: Vishtasp M. Soroushian

Subject: RE: Depo Slots

Peggy Horning or Margaret Martinez?

From: Vishtasp M. Soroushian [<mailto:VSoroushian@beesontayer.com>]

Sent: Friday, June 28, 2013 9:47 AM

To: Hughes, Michael

Cc: Teague Paterson; Hartinger, Art; Spellberg, Geoff; Ross, Linda; Foley, Jilala; Deniken, Ellen; Thomas, Kathy

Subject: RE: Depo Slots

Good morning Mike:

Peggy Martinez is available on Thursday, July 11 at 2:00 P.M. Please let me know if that works, and I will confirm the date/time with her.

Thanks,

Vish Soroushian



Beeson, Tayer & Bodine

510-625-9700

510-625-8275 Fax

From: Hughes, Michael [<mailto:mhughes@meyersnave.com>]

Sent: Thursday, June 27, 2013 4:03 PM

To: Vishtasp M. Soroushian

Cc: Teague Paterson; Hartinger, Art; Spellberg, Geoff; Ross, Linda; Foley, Jilala; Deniken, Ellen; Thomas, Kathy

Subject: RE: Depo Slots

Hi Vish, we'll slot Jeff Rhoads in at 10:30 a.m. on Tuesday, July 9th at Talty Court Reporters in San Jose. Mike

From: Vishtasp M. Soroushian [<mailto:VSoroushian@beesontayer.com>]

Sent: Thursday, June 27, 2013 3:42 PM

To: Hughes, Michael

Cc: Teague Paterson; Spellberg, Geoff; Ross, Linda

Subject: RE: Depo Slots

Hi Mike:

Thanks for the update. I have reached out to our witnesses and have so far been in touch with two of them.

Here is what information I have so far:

- Carol Garcia is out of town and unavailable starting tomorrow (June 28) through July 19.
- Jeff Rhoads is available for deposition in San Jose the mornings of Tuesday, July 9; Wednesday, July 10; or Thursday, July 11

Since this case was filed in San José, AFSCME's witnesses will appear for deposition in San José.

I will keep you updated as I touch base with the rest of the witnesses.

Best,

Vish Soroushian



Beeson, Tayer & Bodine
510-625-9700
510-625-8275 Fax

From: Hughes, Michael [<mailto:mhughes@meyersnave.com>]
Sent: Thursday, June 27, 2013 2:26 PM
To: Vishtasp M. Soroushian
Cc: Spellberg, Geoff; Ross, Linda
Subject: RE: Depo Slots

Hi Vish,

Recent change -- July 2nd in San Jose is no longer available.

Mike

From: Vishtasp M. Soroushian [<mailto:VSoroushian@beesonayer.com>]
Sent: Thursday, June 27, 2013 11:08 AM
To: Hughes, Michael
Subject: RE: Depo Slots

Mike:

Thanks for the info. I am contacting members and we can touch base later.

Why do the witnesses need to be deposed during business hours? Is it because the location can only facilitate us during those time?

Thanks,

Vish Soroushian



Beeson, Tayer & Bodine
510-625-9700
510-625-8275 Fax

From: Hughes, Michael [<mailto:mhughes@meyersnave.com>]
Sent: Thursday, June 27, 2013 9:56 AM
To: Vishtasp M. Soroushian

Cc: Hartinger, Art; Spellberg, Geoff; Ross, Linda; Deniken, Ellen; Foley, Jilala; Thomas, Kathy
Subject: Depo Slots

Hi Vish,

Here's the info we discussed:

The witnesses – both actives and retirees – will need to be deposed during business hours.

We can do the following in San Jose (this presumes we get a full day of witnesses – if it's just one witness on a given day, the witness will need to come to Oakland):

All day, Monday, July 1
All day, Tuesday, July 2
All day, Wednesday, July 3 [but I think this is out due to your travel plans]
All day, Tuesday, July 9
All day, Wednesday, July 10
All day, Thursday, July 11

For Oakland, we can do:

All day, Monday, July 1
Afternoon of Tuesday, July 2
Monday, July 8 until 2:00

Take a look and let's talk early afternoon.

Mike

Michael C. Hughes
Attorney
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Tel: (510) 808-2000
Email: mhughes@meyersnave.com

CONFIDENTIALITY NOTICE:

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EXHIBIT K

Hughes, Michael

From: Hughes, Michael
Sent: Tuesday, July 02, 2013 3:40 PM
To: 'Vishtasp M. Soroushian'
Cc: Teague Paterson; Foley, Jilala; Hartinger, Art; Geoff Spellberg (gspellberg@meyersnave.com); Ross, Linda; Ellen Deniken (edeniken@meyersnave.com); Kathy Thomas (kthomas@meyersnave.com)
Subject: RE: Depo Slots

Hi Vish,

Your suggested dates are not until the week before trial. To the extent AFSCME can suggest an alternate date and time during the week of July 8 to 12 for either witness, please let me know. The City will shortly file a motion in limine to exclude Carol Garcia and Peggy Horning from testifying at trial.

Thanks,

Mike

Michael C. Hughes
Attorney
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Tel: (510) 808-2000
Email: mhughes@meyersnave.com

From: Vishtasp M. Soroushian [<mailto:VSoroushian@beesonayer.com>]
Sent: Tuesday, July 02, 2013 10:13 AM
To: Hughes, Michael
Cc: Teague Paterson; Foley, Jilala
Subject: RE: Depo Slots

Good morning Mike:

Ms. Peggy Horning is available for a deposition in San Jose on Monday, July 15, or Tuesday, July 16, preferably in the afternoon. The previous week does not work for her.

Thanks,
Vish Soroushian



Beeson, Tayer & Bodine
510-625-9700